

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

SHAWN LAWTON and GINA JOHNSON-	:	
LAWTON, on their own behalf and on behalf of	:	
their minor son, I.L.; FOLAKE WIMBISH, on her	:	Civil Action No. 15 Civ. 7058-FB-SMG
own behalf and on behalf of her minor son, S.S.;	:	
FOLAKE OGUNDIRAN, on her own behalf and on	:	
behalf of her minor daughter, M.C.; MONIQUE	:	AMENDED CONSOLIDATED
JEFFREY, on her own behalf and on behalf of her	:	<u>COMPLAINT</u>
minor son, B.S.; and SHANICE GIVENS, on her	:	
own behalf and on behalf of her minor son, C.S.;	:	and
	:	
Plaintiffs,	:	<u>JURY DEMAND</u>
-against-	:	
	:	
SUCCESS ACADEMY CHARTER SCHOOLS,	:	
INC.; SUCCESS ACADEMY FORT GREENE;	:	
CANDIDO BROWN; and JANE DOES 1-3 and	:	
JOHN DOES 1-3,	:	
	:	
Defendants.	:	

----- X

Plaintiffs (i) I.L., a minor, by and through his parents, Plaintiffs Shawn Lawton and Gina Johnson-Lawton, (ii) S.S., a minor, by and through his mother, Plaintiff Folake Wimbish, (iii) M.C., a minor, by and through her mother, Plaintiff Folake Ogundiran, (iv) B.S., a minor, by and through his mother, Plaintiff Monique Jeffrey, (v) C.S., a minor, by and through his mother, Plaintiff Shanice Givens, and, each by and through their counsel New York Lawyers for the Public Interest, Stroock & Stroock & Lavan LLP, and Advocates for Justice, Chartered Attorneys, as and for an Amended Complaint against Defendants Success Academy Charter Schools, Inc., Success Academy Fort Greene, Candido Brown, and John Does 1-3 and Jane Does 1-3, hereby allege the following:

PRELIMINARY STATEMENT

1. This action arises out of an illegal, discriminatory campaign—spearheaded by Defendant Candido Brown and condoned (if not encouraged) by Defendant Success Academy Charter Schools, Inc., the corporate parent responsible for overseeing a growing network of Success Academy charter schools in New York City—to force out from Success Academy Fort Greene students with disabilities (or those students perceived to have disabilities) who needed appropriate accommodations with respect to teaching methods or the school’s rigid and unyielding disciplinary policy.

2. I.L., S.S., M.C., B.S., and C.S. (together, the “Child-Plaintiffs”) enrolled in a kindergarten class at Success Academy Fort Greene in September 2013 or September 2014. Each had great difficulty complying with Success Academy’s “zero tolerance” Code of Conduct—particularly the rules that prohibit kindergartners from fidgeting or being off-task. As a result of their actual or perceived disabilities, and as a result of Defendants’ refusal to make accommodations for those disabilities, the Child-Plaintiffs were subjected to unrelenting punishment from school employees, ranging from removal from the classroom to early dismissals and suspensions. Success Academy employees also threatened—and, in at least one instance, carried out the threat—to call the police or the Administration for Children’s Services (“ACS”) to take custody of children because of their “unsafe” behavior (such as running in a classroom, not listening to a teacher, or having a tantrum).

3. There can be no doubt that Defendants intentionally sought to force out the Child-Plaintiffs from Success Academy Fort Greene. Only after all of the Child-Plaintiffs had transferred to other schools was it revealed that Defendant Candido Brown had created a list of

students—bluntly titled the “Got to Go” list—that he wanted removed from Success Academy Fort Greene. All of the Child-Plaintiffs were included on that list.

4. As a public charter school, Success Academy cannot remove students without following formal procedures and having good cause. Brown instead made Plaintiffs’ time at Success Academy so difficult, that the Lawtons, Ms. Wimbish, Ms. Ogundiran, Ms. Jeffrey, and Ms. Givens (together, the “Parent-Plaintiffs,” and together with the Child-Plaintiffs, the “Plaintiffs”) had no choice but to “voluntarily” withdraw their children from the school. A New York Times’ article, published in October 2015, brought Brown’s scheme to light. N.Y. Times, *At a Success Academy Charter School, Singling Out Pupils Who Have “Got to Go”* (Oct. 29, 2015).

5. As a result of Defendants’ conduct, Plaintiffs bring this action and assert claims for relief under § 504 of the Rehabilitation Act of 1973 and 42 U.S.C. § 1983. Plaintiffs also assert claims under New York State and City law.

PARTIES

The Lawton Plaintiffs

6. Plaintiff I.L. is six years old and resides in Brooklyn, New York. He attended Success Academy Fort Greene from September 2014 to February 2015. I.L. brings this lawsuit through his father, Plaintiff Shawn Lawton, and his mother, Plaintiff Gina Johnson-Lawton.

7. I.L. is classified by the New York City Department of Education as an individual with a speech or language impairment. Accordingly, he meets the state and federal definition of a child with a disability who is in need of special education and related services. I.L.’s speech or language impairment substantially limits him in a major life activity—namely, in learning—and I.L. is thus a qualified individual with a disability (also referred to as a “qualified handicapped

person”) under § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the regulations promulgated thereunder, 28 C.F.R. pt. 42, subpt. G. and 34 C.F.R. § 104.

8. Success Academy Fort Greene also regarded I.L. as having attention deficit/hyperactivity disorder (“ADHD”), with impairments in his ability to concentrate and learn.

9. Though I.L. is classified as having a speech-language impairment and has exhibited attentional difficulties, he is qualified to participate in the educational program offered by Success Academy Fort Greene.

The Wimbish Plaintiffs

10. Plaintiff S.S. is seven years old and resides in Brooklyn, New York. He attended Success Academy Fort Greene from September 2013 through June 2015. S.S. brings this lawsuit through his mother, Plaintiff Folake Wimbish.

11. S.S. is classified by the New York City Department of Education as an individual with a learning disability. Accordingly, he meets the state and federal definition of a child with a disability, who is in need of special education and related services.

12. S.S.’s learning disability substantially limits him in major life activities—namely, in learning—and S.S. is thus a qualified individual with a disability (also referred to as a “qualified handicapped person”) under § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the regulations promulgated thereunder, 28 C.F.R. pt. 42, subpt. G. and 34 C.F.R. § 104.

13. In addition, Defendants regarded S.S. as having a learning and/or behavioral disability that impeded his ability to comply with Success Academy’s rigid disciplinary code.

14. Though S.S. was classified as having a learning disability, he is qualified to participate in the educational program offered by Success Academy Fort Greene.

The Ogundiran Plaintiffs

15. Plaintiff M.C. is eight years old and resides in Brooklyn, New York. She attended Success Academy Fort Greene from September 2013 through December 2014. M.C. brings this lawsuit through her mother, Plaintiff Folake Ogundiran.

16. M.C. has not been classified as having a learning disability. However, Defendants regarded her as having a learning and/or behavioral disability that impeded her ability to comply with Success Academy's rigid disciplinary code.

17. That perceived impairment makes M.C. a qualified individual with a disability (also referred to as a "qualified handicapped person") under § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the regulations promulgated thereunder, 28 C.F.R. pt. 42, subpt. G. and 34 C.F.R. § 104.

18. M.C. is qualified to participate in the educational program offered by Success Academy Fort Greene.

The Jeffrey Plaintiffs

19. Plaintiff B.S. is six years old and resides in Brooklyn, New York. He attended Success Academy Fort Greene from September 2014 through June 2015. B.S. brings this lawsuit through his mother, Plaintiff Monique Jeffrey.

20. B.S. has not been classified as having a learning disability. However, Defendants regarded him as having a learning and/or behavioral disability that impeded his ability to comply with Success Academy's rigid disciplinary code.

21. That perceived impairment makes B.S. a qualified individual with a disability (also referred to as a "qualified handicapped person") under § 504 of the Rehabilitation Act of

1973, 29 U.S.C. § 794, and the regulations promulgated thereunder, 28 C.F.R. pt. 42, subpt. G. and 34 C.F.R. § 104.

22. B.S. is qualified to participate in the educational program offered by Success Academy Fort Greene.

The Givens Plaintiffs

23. Plaintiff C.S. is seven years old and resides in Brooklyn, New York. He attended Success Academy Fort Greene from September 2014 through June 2015. C.S. brings this lawsuit through his mother, Plaintiff Shanice Givens.

24. C.S. has been diagnosed with ADHD and oppositional defiant disorder (“ODD”). In addition, Success Academy perceived C.S. as having an autism spectrum disorder. Accordingly, he meets the state and federal definition of a child with a disability, who is in need of special education and related services.

25. C.S.’s learning disability substantially limits him in major life activities—namely, in learning—and C.S. is thus a qualified individual with a disability (also referred to as a “qualified handicapped person”) under § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the regulations promulgated thereunder, 28 C.F.R. pt. 42, subpt. G. and 34 C.F.R. § 104.

26. Though C.S. is classified as having ADHD and ODD, he is qualified to participate in the educational program offered by Success Academy Fort Greene.

The Defendants

27. Defendant Success Academy Charter Schools, Inc. (“Success Academy”) is a non-profit corporation organized under the laws of the State of Delaware. Success Academy’s corporate headquarters is located at 95 Pine Street, New York, New York. It manages and

oversees a network of 36 charter schools in New York City, with 17 locations in Manhattan, 10 in Brooklyn, 7 in the Bronx, and 2 in Queens.

28. Success Academy receives funding from both federal and state government.

29. Success Academy also receives indirect funding from the City of New York because it receives from the New York City Department of Education (“DOE”) rent-free space for its schools.

30. Defendant Success Academy Fort Greene is a charter school operated by Success Academy Charter Schools, Inc. It is located at 101 Park Avenue, Brooklyn, New York. To the extent that Success Academy Fort Greene is a separate corporate entity, it is controlled and operated by Success Academy.

31. Defendant Candido Brown is an employee and agent of Success Academy and/or Success Academy Fort Greene. Brown was the principal of Success Academy Fort Greene beginning in or about November 2014 and continuing through at least September 2015.

32. Defendants Jane Does 1-3 and John Does 1-3 are employees and agents of Success Academy and/or Success Academy Fort Greene and at all relevant times held administrative or executive positions at Success Academy or Success Academy Fort Greene.

JURISDICTION AND VENUE

33. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343, 29 U.S.C. § 794a, and 42 U.S.C. § 1983. Under 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over the claims arising under New York State and City law.

34. Venue is proper under 28 U.S.C. § 1391 in the Eastern District of New York as the jurisdiction in which Plaintiffs reside and in which the events giving rise to Plaintiffs' claims occurred.

FACTS

A. Success Academy Trains Candido Brown to be a School Leader and then Hires Him to Run Success Academy Fort Greene.

35. Founded by former New York City Council Member Eva Moskowitz in 2006, Success Academy oversees a network of charter schools operating in Manhattan, Brooklyn, Queens and the Bronx.

36. Success Academy is responsible for the overall administration of individual charter schools within its network. From its offices in the Financial District, Success Academy supervises this network of charter schools by setting network-wide policies and goals; hiring school leaders and other professionals, including teachers, responsible for carrying out its mission; encouraging the development of shared services, curricula, and facilities among the Success Academy network schools; and creating and implementing plans to replicate the Success Academy approach to education. Success Academy promises to prove that all children can succeed academically.

37. In or about October 2014, Success Academy hired Defendant Candido Brown to serve as principal for Success Academy Fort Greene. As principal of Success Academy Fort Greene, Brown was responsible for carrying out Success Academy's policies and practices. Brown was also responsible for ensuring compliance with Success Academy's "Code of Conduct."

38. Prior to being hired as the principal of Success Academy Fort Greene, Brown held other roles within the network, including serving as a classroom teacher in a Success Academy school for three years and serving two years as a “Leadership Resident.”

39. Then and now, Success Academy had a “zero tolerance” approach to discipline with a Code of Conduct that lists dozens of infractions. That Code of Conduct prohibits, among other things: (i) failing to sit in Success Academy’s “Magic 5” sitting position, requiring even kindergarten-aged students and first graders like Plaintiffs to sit with their backs straight, hands folded on their laps, and eyes tracking the teacher at all times; (ii) failing to be “on-task”; (iii) failing to be “engaged in learning”; (iv) failing to follow directions or complete work; and (v) failing to comply with the dress code, which requires in part that kindergartners and first graders ensure that their shirts are tucked in at all times. Success Academy schools adhere to strict drills for nearly all tasks, including how to stand in line, walk up and down stairs, and how to move from one classroom to another in complete silence by inflating their cheeks and holding “air bubbles” in their mouths.

40. Success Academy classrooms are taught by teachers using a tightly-timed rote script. Teachers use stopwatches to ensure each part of each task—from substantive academic assignments to walking from one class to another—is completed within an amount of time dictated by script.

41. As a recipient of federal funding, Success Academy is required to comply with various federal laws, including Section 504 of the Rehabilitation Act of 1973.

B. Plaintiffs Are Chosen by Lottery for Admission to Success Academy Fort Greene.

42. As a public charter school, Success Academy is prohibited from picking and choosing which students to admit. It must admit all students who apply, regardless of disability.

Where demand for admission exceeds a charter school's capacity, it holds a lottery to admit, on a random basis, an appropriate number of students.

43. Each of the Child-Plaintiffs applied for admission to a kindergarten class at Success Academy Fort Greene and each was selected for admission.

C. The Child-Plaintiffs' Actual or Perceived Disabilities Impede Their Ability to Comply with Success Academy's Disciplinary Code; Success Academy Forces Them Out.

44. Within each Success Academy kindergarten class, students' behavioral infractions were tracked with a green-yellow-red system. Each day was broken out into a morning and afternoon session, and infractions were tracked for each session. If a child violated the Code of Conduct, he or she would move from "green" to "yellow" or "yellow" to "red"; there was no option to move back from "yellow" to "green," or "red" to "yellow" during the session should the student's behavior improve.

45. Once a student moved to "red," a variety of consequences were meted out. For instance, students could be subjected to a "cool down" protocol, which consists of sitting in the corner of another classroom (sometimes referred to as a "buddy classroom"). Once that part of the "cool down" process was complete, the student would be returned to his or her classroom to sit in the corner of that classroom for an additional period of time. If the student missed an assignment during this "cool down" process, he or she would receive zero credit for that assignment.

46. If a student could not withstand this "cool down" process, the student would be dismissed for the day. These early dismissals were routinely used as a means of punishing the student and coercing the parents—who would be required to take time off of work to pick up their children—to remove their children from Success Academy. Success Academy employees concealed the frequency of these early dismissals by not documenting them. When students

were sent home in an early dismissal, they were not provided with the assignments that their classmates would work on in their absence.

47. If a student could not be picked up quickly enough by their parents (i.e., usually about 45 minutes), the student would then be formally suspended. Success Academy also used other threats—including threats to call the police or ACS—to force parents to immediately pick up their children.

48. All of the Child-Plaintiffs were subjected to this system and suffered a variety of harm as a result.

49. The Plaintiffs did not know that Defendants' had deliberately targeted the Child-Plaintiffs to force their withdrawal from Success Academy. It was only in September 2015, after all of the Child-Plaintiffs had withdrawn from Success Academy Fort Greene, that it was revealed that Candido Brown had determined that each of the Child-Plaintiffs were hindrances to the school's success and deliberately set out to force their removal from the Success Academy network of schools. The "Got To Go" list that Brown developed has been widely reported in the press, and Brown himself has acknowledged its existence.

D. Success Academy Discriminates Against I.L. and Retaliates Against his Father.

50. I.L., the son of Plaintiffs Shawn Lawton and Gina Johnson-Lawton, was five years old when he was enrolled in a Success Academy kindergarten class in the fall of 2014.

51. When I.L. entered kindergarten, it soon became apparent that he had difficulty completing academic work, particularly in mathematics. It was also extremely difficult for him to complete tasks as quickly as Success Academy policy dictated. I.L. also struggled to comply with the rigid Code of Conduct. He frequently responded to Success Academy's rigid classroom conditions by fidgeting and showing other physical signs of anxiety. This made it particularly

difficult for I.L. to maintain the “Magic 5” sitting position, which in turn led to escalating disciplinary consequences.

52. Within I.L.’s first month at Success Academy Fort Greene, school employees called his parents multiple times each day to report that I.L. was violating the Code of Conduct. These infractions ranged from laying on the classroom carpet to not sitting up straight, not properly inflating his cheeks pursuant to Success Academy Rules when he wished to speak in class, and failing to sit up fast enough when instructed to rise from his seat. School employees also complained that I.L. could not sit still, could not follow directions, was inattentive, and could not complete tasks.

53. In or about October 2014, Success Academy employees began to use these calls not just to report disciplinary code infractions, but to demand that the Lawtons pick up I.L. before the school day concluded. Often, these calls would be made as early as 8:15 a.m., forcing I.L. to miss an entire day’s worth of instruction. Notably, when I.L. was dismissed from school early, he was not given the educational materials his classmates were working on in his absence.

54. The Lawtons were told that if they could not remove I.L. within 45 minutes of an early dismissal call, I.L. would be formally suspended.

55. In an effort to better understand I.L.’s classroom difficulties and to help prevent them, I.L.’s father, Plaintiff Shawn Lawton, asked to observe I.L. in the classroom. Success Academy employees allowed Mr. Lawton to observe the classroom, informing him that the school had an “open door” policy that allowed parents into the classroom for such purposes.

56. Mr. Lawton typically sat in on I.L.’s class three to four times per week, until 2:45 p.m., when he had to leave for work. When Mr. Lawton was in the classroom, I.L. could successfully stay out of “red” on the green-yellow-red behavior tracking system. When Mr.

Lawton was present, I.L. was less likely to be subjected to the “cool down” protocol. On days when Mr. Lawton could not observe I.L. in the classroom, or during the time when Mr. Lawton would have to leave for work before the school day ended (at 4:00 p.m.), I.L. would almost invariably be moved to “red” in the behavior tracking system.

57. I.L. was frequently subjected to the “cool down” protocol, which led to his removal from the classroom. The combination of early dismissals and “cool down” time meant that I.L. was missing tremendous amounts of classroom instruction.

58. Even Success Academy Fort Greene’s system of rewards discriminated against I.L. Kindergarten students who scored less than perfect on tests or quizzes, including I.L., were made to sit separately from children who had achieved perfection. Students who scored “100” on an assignment (known as the “100 club”), meanwhile, were given candy and other rewards. In addition, as a consequence for Code of Conduct infractions, I.L. was banned from attending school trips unless Mr. Lawton accompanied him.

59. This toxic environment took a heavy toll on I.L. His confidence suffered. He became more introverted and timid. He began to have nightmares, and spoke in his sleep of “no consequences.” His academic performance suffered and he fell further behind his peers.

60. In or about December 2014—after being repeatedly subjected to disciplinary consequences, including early dismissals, and only after the Lawtons expressed concern to Success Academy staff about the impact that the discipline was having on I.L.—Success Academy Fort Greene employees finally began to evaluate I.L. for an individualized education plan (“IEP”), pursuant to the Individuals with Disabilities Education Act (“IDEA”).¹ At that

¹ An IEP is an “Individualized Education Program” that is comprised of a written plan or program developed to ensure that a child who has a disability identified under the law receives specialized instruction and related services.

time, the Lawtons were unfamiliar with their legal rights, and the rights of I.L., with respect to special education, and Success Academy did not inform them of those rights.

61. In the course of that evaluation, I.L. was observed in the classroom, where it was noted that he had difficulty focusing when working independently. Teachers reported, among other things, that I.L. was hyperactive, anxious, and depressed. Staff reported that I.L. had difficulty focusing and with receiving corrections. The observation also noted that his attention could improve when he was allowed to play with something in his hands.

62. While this evaluation was underway, and just before school closed for the December break, Defendant Candido Brown met with the Lawtons. Brown told the Lawtons that they should remove I.L. from Success Academy Fort Greene because I.L. was not a “good fit” for Success Academy.

63. At that same meeting, Brown said that Mr. Lawton would no longer be allowed in I.L.’s classroom. As Mr. Lawton’s presence in the classroom helped I.L. comply with the Code of Conduct and complete assignments, barring Mr. Lawton from the classroom had an immediate negative impact on I.L.’s ability to function at Success Academy Fort Greene. From that point forward, Mr. Lawton was only allowed to observe I.L.’s classroom for 45 minutes each day from the hallway. Brown prohibited Mr. Lawton from sitting in I.L.’s classroom only after learning that Mr. Lawton had met with Success Academy Fort Greene employees to voice his concerns about the toll that SA’s policies were taking on I.L.

64. Despite Brown’s admonition that I.L. was not a “good fit” for Success Academy, and hoping that I.L. could still succeed there, the Lawtons decided to allow I.L. to return to Success Academy Fort Greene in January 2015. The learning environment for I.L. continued to deteriorate.

65. Success Academy staff completed their evaluation of I.L. in January 2015. That evaluation recommended a behavior management plan for I.L. It also recommended behavioral supports in the form of coping strategies (i.e., taking a walk, being permitted to take short breaks, taking deep breaths, being permitted to ask an adult for help). Nevertheless, Success Academy did not develop a § 504 behavioral plan for I.L. that included these strategies. Success Academy refused to make any accommodations to its Code of Conduct to account for I.L.'s disabilities.

66. Throughout January and February 2015, Success Academy employees continued to call the Lawtons to report I.L.'s violations of the Code of Conduct and to inform the Lawtons that I.L. was in the "cool down" protocol. These calls were made on a daily basis and would start almost immediately after I.L. arrived at school. Success Academy employees also continued to subject I.L. to early dismissals and to threaten suspension.

67. In February 2015, faced with Success Academy's refusal to implement appropriate accommodations for I.L. and with the school's relentless campaign of imposing disciplinary consequences on I.L., the Lawtons transferred I.L. to a nearby public school.

68. That school, in conjunction with the local Committee for Special Education ("CSE"), developed an IEP for I.L. That IEP classified I.L. as having a speech-language impairment. It called for I.L. to receive regular counseling, speech-language therapy, and occupational therapy. Moreover, pursuant to the IEP, I.L. has been placed in an integrated co-teaching ("ICT") classroom.² The IEP also includes specific goals intended to manage behaviors caused by academic stress. As a result of these accommodations and academic supports—all of which could have been, and should have been, offered at Success Academy Fort Greene—I.L. currently has exhibited far fewer behavioral issues and his academic performance is improving.

² ICT classrooms are taught by two teachers, one general education teacher and one special education teacher. The number of students in the classroom is the same as any general education classroom; the only difference is that some of the students in the classroom, like I.L., have special educational needs.

69. Success Academy Fort Greene failed to provide I.L. with any reasonable accommodations, which should have included, at a minimum, a behavioral plan pursuant to § 504 of the Rehabilitation Act of 1973 designed to identify, manage, and extinguish the problematic behaviors.³ Success Academy also violated § 504 by:

- a. Failing to notify the Lawtons of I.L.’s rights, and their rights, under § 504;
- b. Failing to direct the Lawtons to a § 504 coordinator (if in fact such a person existed at Success Academy Fort Greene at the time);
- c. Failing to convene a § 504 meeting to determine whether I.L. required a behavioral plan to address his difficulties with focusing and following the discipline policy; and
- d. Failing to develop interventions that would provide access to the curriculum and educational program for I.L., including creation of a modified disciplinary policy.

E. Success Academy Discriminates Against S.S.

70. S.S., the son of Plaintiff Folake Wimbish, was five-years-old when he was enrolled in a kindergarten class at Success Academy Fort Greene in August 2013.

71. Beginning in S.S.’s first month at Success Academy, school employees repeatedly called Ms. Wimbish to report that S.S. was violating the school’s disciplinary policy by not following directions, failing to remain in the “Magic 5” sitting position, having tantrums, or walking away from a teacher. Ms. Wimbish was also informed that S.S. was not appropriately responding to corrections—itsself a disciplinary code infraction—because he would grimace or

³ A “504 Plan” is a written plan developed to ensure that a child who has a disability identified under the law receives accommodations that will give them an equal opportunity to achieve academic success and give them access to an appropriate learning environment.

look unhappy when punished. S.S. was also punished for his difficulty transitioning from one task to another. On occasion, S.S. was also punished for allegedly hitting others.

72. By October or November of 2013, and in response to S.S.'s behavioral issues, Success Academy developed an informal behavioral plan for S.S., which consisted of giving S.S. stickers for good behavior. That informal plan was not followed consistently, and it produced no noticeable improvement in S.S.'s behavior. S.S. also received a once-weekly counseling session.

73. Mid-way through S.S.'s kindergarten year, Success Academy recommended that Ms. Wimbish seek an evaluation to determine the cause of S.S.'s behaviors. Ms. Wimbish then took S.S. to the NYC Children's Center for an evaluation. In or about April 2014, S.S. was diagnosed with ADHD.

74. Ms. Wimbish promptly provided that diagnosis to Success Academy staff. She also began taking S.S. to private counseling. S.S.'s counselor provided Ms. Wimbish with intervention techniques to address S.S.'s disability. Ms. Wimbish, in turn, provided those techniques to Success Academy staff, but they failed to implement them.

75. As a direct result of Success Academy's failure to make accommodations to its rigid disciplinary code for S.S. and failure to develop a Section 504 behavioral plan, S.S. was repeatedly subjected to a range of disciplinary consequences. On an almost daily basis, S.S. was sent to a "buddy class" (another kindergarten classroom taught by a different teacher). Multiple times per week, Success Academy staff demanded that Ms. Wimbish immediately pick up S.S, often less than one hour into the school day. If Ms. Wimbish could not pick up S.S. within 45 minutes of these early dismissal calls, S.S. would be formally suspended. Unlike suspensions, his early dismissals were not documented.

76. S.S. was also formally suspended approximately eleven times in the 2013-2014 school year. The combination of suspensions, early dismissals, and “buddy class” removals meant that S.S. missed tremendous amounts of classroom instruction that year. It also put a tremendous emotional strain on S.S. and Ms. Wimbish. It also negatively impacted Ms. Wimbish’s career, as she would be late to work in order to pick up S.S. or to meet with school employees concerning S.S.’s behavior.

77. Nevertheless, after S.S. completed kindergarten in June 2014, Ms. Wimbish—determined to make every effort possible to help S.S. succeed at Success Academy Fort Greene—returned S.S. to Success Academy Fort Greene in September 2014 as a first grader.

78. In October 2014, Ms. Wimbish re-submitted a request for an IEP. In November, Success Academy personnel evaluated S.S. Thereafter, multiple Success Academy employees encouraged Ms. Wimbish to remove S.S. from Success Academy.

79. An IEP meeting was held in January 2015. The CSE refused to issue an IEP for S.S. Based on information that Ms. Wimbish received, the CSE declined to issue an IEP because Success Academy Fort Greene staff had falsely stated that S.S.’s behavior was being adequately managed through an informal behavioral plan. Success Academy staff did not inform the CSE of S.S.’s numerous suspensions and early dismissals. Ms. Wimbish eventually learned of her right to file a due process complaint to challenge that determination.

80. In March 2015, Ms. Wimbish filed a *pro se* due process complaint, pursuant to the provisions of the Individuals with Disabilities Education Act (IDEA).⁴ An initial hearing on that complaint was held before an Impartial Hearing Officer on April 27, 2015. While the parties were attempting to schedule hearing dates, the DOE offered to provide S.S. with an IEP that

⁴ Under IDEA, parents can challenge a school district’s failure to provide a child with a “free appropriate public education.”

would provide for a paraprofessional. Ms. Wimbish accepted this offer. The CSE team then reconvened in May 2015 and issued a new IEP.

81. In or about May 2015, the DOE provided S.S. with a paraprofessional while attended Success Academy.

82. As a result of Success Academy's refusal to implement a behavior management plan for S.S. in the 2014-2015 school year, S.S. was subjected to dozens of early dismissals. He was also formally suspended approximately 19 times that school year, meaning that Success Academy subjected S.S. to a total of approximately 30 suspensions in kindergarten and first grade. But the campaign to force out S.S. reached a new low in June 2015.

83. On a field trip to the Museum of Natural History, the six-year-old S.S. became upset when he wanted to spend more time at an exhibit than his chaperones would allow.

84. In response, the Success Academy teacher who chaperoned the trip called the police.

85. On arrival, the police contacted Ms. Wimbish and stated that S.S. was a "good kid" and was calm, but was being taken to the hospital. S.S. was placed in an ambulance and taken to the pediatric psychiatric unit at St. Luke's Hospital. S.S.'s father and Ms. Wimbish's mother picked up S.S. from the hospital as soon as possible. When she arrived, S.S. was sitting calmly with a nurse. His discharge papers reflect that the episode was an exacerbation of his ADHD .

86. Success Academy Fort Greene violated § 504 of the Rehabilitation Act by failing to provide S.S. with any reasonable accommodations, which should have included, at a minimum, a consistently-implemented behavioral plan designed to identify, manage, and extinguish the problematic behaviors. Success Academy also violated § 504 by:

- a. Failing to notify Ms. Wimbish of S.S.’s rights, and her rights, under § 504;
- b. Failing to direct Ms. Wimbish to a § 504 coordinator (if in fact such a person existed at Success Academy Fort Greene at the time);
- c. Failing to convene a § 504 meeting to determine whether S.S. required a behavioral plan to address his difficulties with focusing and following the discipline policy; and
- d. Failing to develop interventions, including the creation of a modified disciplinary policy that would allow S.S. to benefit from the educational program and extracurricular activities of Success Academy.

87. Ms. Wimbish placed S.S. in a local public school for the 2015-2016 school year. Now receiving accommodations that he was denied at Success Academy, S.S.’s behavior has improved, as has his academy performance and social-emotional well-being.

F. Success Academy Discriminates Against M.C. and Retaliates Against Ms. Ogundiran.

88. M.C., the daughter of Folake Ogundiran, was five-years-old when she was enrolled in a kindergarten class at Success Academy Fort Greene in September 2013.

89. M.C. had difficulty complying with Success Academy’s rigid disciplinary code. In particular, she had difficulty staying in perfect compliance with the “Magic 5” sitting position or making eye contact when speaking with her teachers. As a result of these and other violations, M.C. was often placed in “red” in the behavioral coding system, her mother was called on an almost daily basis, and M.C. was frequently removed from the classroom—either to a “buddy class” or to an administrator’s office where she would be forced to sit in silence, most of the time without classwork. She was also sent home early from school many times—three to four times per week, in both kindergarten and first grade. These early dismissals were not documented.

90. In addition to dozens of early dismissals, M.C. was also formally suspended approximately twice during her kindergarten year.

91. Success Academy did not recommend evaluating M.C. In or about May 2014, school employees suggested to Ms. Ogundiran that M.C.'s behavioral problems may have been caused by "boredom," and tried placing M.C. in a first grade classroom. That placement did nothing to remedy the behavioral problems. Success Academy took no other steps that year to address M.C.'s behavioral issues.

92. Despite the tremendous strain placed on M.C. and herself during kindergarten, Ms. Ogundiran returned M.C. to Success Academy for first grade in September 2014. The first two months of that school year proceeded much the same way as M.C.'s kindergarten year, with the usual "buddy class" removals and undocumented early dismissals.

93. On or about December 6, 2014, Ms. Ogundiran asked the school's principal, Candido Brown, to make accommodations for M.C. that would accommodate M.C.'s inability to perfectly comply with the Magic 5 sitting position. Three days later, on or about December 9, 2014, Mr. Brown called Ms. Ogundiran and told her that M.C. was having a bad day and that he would have to call the police if M.C.'s "unsafe" behavior persisted. This "unsafe" behavior consisted of M.C.—who was six years-old at the time—not listening to her teachers and running in a classroom.

94. Mr. Brown's threat worked. Ms. Ogundiran was terrified by the thought of her daughter being taken by the police. She immediately left work, picked up M.C., and transferred her to a public school.

95. In the three months she spent at Success Academy in first grade (September 2014 through December 2014), M.C. was suspended at least three times.

96. Though M.C. has not been diagnosed with a learning disability, Defendants and other Success Academy employees perceived M.C. as having a learning and/or behavioral disability that interfered with her ability to comply with Success Academy's disciplinary code.

97. Success Academy Fort Greene violated § 504 of the Rehabilitation Act by failing to provide M.C. with any reasonable accommodations, which should have included, at a minimum, a behavioral plan designed to identify, manage, and extinguish the problematic behaviors. Success Academy also violated § 504 by:

- a. Failing to notify Ms. Ogundiran of M.C.'s rights, and her rights, under § 504;
- b. Failing to direct Ms. Ogundiran to a § 504 coordinator (if in fact such a person existed at Success Academy Fort Greene at the time);
- c. Failing to convene a § 504 meeting to determine whether M.C. required a behavioral plan to address his difficulties with focusing and following the discipline policy; and
- d. Failing to develop interventions, including creation of a modified disciplinary policy that would allow M.C. to benefit from the educational program and extracurricular activities of Success Academy.

G. Success Academy Discriminates Against B.S.

98. B.S., the son of Monique Jeffrey, was four years-old when he was enrolled in a kindergarten class at Success Academy Fort Greene in September 2014.

99. Like the other Plaintiffs here, B.S. had difficulty remaining in the "Magic 5" sitting position: he often leaned his head on his desk or gazed off instead of focusing intently on the teacher at all times; he would occasionally swing his legs under his desk. He also had

difficulty remaining “on-task,” completing tasks within the period of time dictated by the Success Academy schedule. He also had difficulty with his academic performance, particularly in mathematics and reading.

100. By October 2014, Success Academy began punishing B.S. by sending him home early from school. This occurred approximately three to four times per week.

101. As a kindergartner, B.S. was suspended approximately five times.

102. On one occasion, in December 2014, Success Academy threatened to suspend B.S. if he was not picked up from school by noon. When B.S.’s father arrived five minutes later he was given a letter suspending B.S. for failing to pick up B.S. by the noon deadline.

103. Also in December 2014, B.S.’s father met with Candido Brown and other Success Academy Fort Greene employees stated their view that B.S. was struggling in math and reading.

104. In or about November or December 2014, Candido Brown expressly told Ms. Jeffrey to remove B.S. from the school. This message was echoed by other administrators in December 2014 and January 2015. Ms. Jeffrey was repeatedly told that B.S. should be in a different school because he just “could not get the program” and “could not fit in.”

105. The constant phone calls and informal suspensions took their toll both on B.S. and Ms. Jeffrey. B.S.’s emotional state deteriorated, and Ms. Jeffrey was reprimanded by her employer for being constantly interrupted by phone calls at work and for having to repeatedly leave early to pick up B.S. Her husband also lost wages when he had to leave work early to pick up B.S.

106. Though B.S. has not been diagnosed with a learning disability, Defendants and other Success Academy employees regarded B.S. as having a learning and/or behavioral

disability that interfered with his ability to comply with Success Academy’s disciplinary code and interfered with his ability to do well academically.

107. Success Academy Fort Greene violated § 504 of the Rehabilitation Act by failing to provide B.S. with any reasonable accommodations, which should have included, at a minimum, a behavioral plan designed to identify, manage, and extinguish the problematic behaviors. Success Academy also violated § 504 by:

- a. Failing to notify Ms. Jeffrey of B.S.’s rights, and her rights, under § 504;
- b. Failing to direct Ms. Jeffrey to a § 504 coordinator (if in fact such a person existed at Success Academy Fort Greene at the time);
- c. Failing to convene a § 504 meeting to determine whether B.S. required a behavioral plan to address his difficulties with focusing and following the discipline policy; and
- d. Failing to develop interventions, including creation of a modified disciplinary policy that would allow B.S. to benefit from the educational program and extracurricular activities of Success Academy.

108. Ms. Jeffrey transferred B.S. to another charter school in September 2015, and B.S. is doing well there—performing at or above grade level in some subjects and rebuilding his social-emotional well-being.

H. Success Academy Discriminates Against C.S.

109. C.S., the son of Shanice Givens, was five-years-old when he was enrolled in a kindergarten class at Success Academy Fort Greene in September 2014.

110. Before the school year began, Ms. Givens informed Success Academy that C.S. had behavioral issues that would require support from the school. Although C.S. could do well

academically, she told school employees that he could be disruptive, had a short attention span, had trouble sitting still, and could at times hit others. At that time, his disability was not yet diagnosed.

111. The calls home to Ms. Givens started on the first day of school. A Success Academy employee called Ms. Givens to report that C.S. had walked out of his classroom and would not listen to the teacher. Ms. Givens was called into school to speak with C.S. and get him to calm down.

112. Over the course of the next several months, the phone calls home continued. Typically, the first call would be made within the first 45 minutes of the school day. That first call would be followed by many more calls over the course of the day. Usually around 1:00 or 2:00, school staff would tell Ms. Givens that C.S. was being dismissed. Before Candido Brown became the school principal, Ms. Givens was typically given up to an hour to pick up C.S.; after Brown took the helm at Success Academy Fort Greene, Ms. Givens was given 20 minutes to pick him up. They would give her 30-45 minutes to pick him up. Because Ms. Givens works a full-time job, she was often unable to pick up C.S. in the allotted time and, as a result, Success Academy would then suspend C.S. The early dismissals were occurring three to five times per week. Between August and October 2014, C.S. was formally suspended twice; after Brown took over, the frequency of suspensions increased dramatically, and C.S. was formally suspended once or twice per week.

113. The school created an informal behavior plan. But that plan was not followed consistently and was not adhered to by C.S.'s teachers, and ultimately was not successful in addressing C.S.'s behavioral issues.

114. In October 2014, as a result of the repeated formal and informal suspensions and daily phone calls home, Ms. Givens requested a meeting with school administrators. At that meeting, a school dean explained that C.S. needed a different learning environment and suggested that C.S. be evaluated for an IEP.

115. Evaluations were conducted and Success Academy employees determined that C.S. had symptoms consistent with an autism-spectrum disorder, as well as a speech-language disorder and attention deficits. Based on that assessment, the CSE team developed an IEP, and recommended that C.S. be placed in what is known as an Integrated Co-Teaching classroom—which is a general education classroom taught by a regular classroom teacher and special education teacher.

116. Subsequent evaluations by professionals unaffiliated with Success Academy did not support an autism diagnosis; rather, they concluded that C.S.'s behaviors were consistent with ADHD and oppositional defiant disorder (“ODD”).

117. Between November and December 2014, Success Academy employees repeatedly told Ms. Givens that C.S. could not be accommodated at Success Academy. Beginning in January 2015, Success Academy employees escalated the pressure on Ms. Givens to remove C.S. School employees would email and call Ms. Givens on a nearly daily basis to report disciplinary code violations, and C.S. was sent home early three to four times per week.

118. In or about February 2015, Success Academy Fort Greene employees pressured Ms. Givens to agree to pick up C.S. from school every day at noon. Ms. Givens refused. Later that month, a Success Academy employee called Ms. Givens to report that C.S. was being disruptive. She was told that if she did not pick up C.S. within approximately 20 minutes, that they would call ACS to take custody of C.S. Ms. Givens immediately picked up C.S.

119. After C.S. completed kindergarten at Success Academy Fort Greene, Ms. Givens placed him in a public school. In his new placement, he receives support from a paraprofessional in the classroom, as well as speech and language therapy, and counseling. His behavior and academics have been improving.

I. The “Got to Go” List Comes to Light and Reveals Defendants’ Discriminatory Intent and Deliberate Efforts to Force the Child-Plaintiffs Out of Success Academy.

120. Between August and September 2015, the Parent-Plaintiffs received information that Defendant Candido Brown deliberately targeted their children for removal from Success Academy.

121. Specifically, Brown included the Child-Plaintiffs on a list of students that he wanted removed from Success Academy Fort Greene. That list was titled “Got to Go” and also named other Success Academy Fort Greene students with actual or perceived disabilities.

122. Each of the Child-Plaintiff were included on Brown’s “Got to Go” list, and was subjected to the disciplinary consequences set forth above, because of his or her actual or perceived disabilities.

123. Upon information and belief, Brown’s actions were the result of his training by Success Academy, and were at all times intended to reflect and comply with SA’s practices, policies, and procedures.

124. After the “Got to Go” list came to light, *The New York Times* investigated the matter. Reporters for *The New York Times* reviewed documents and interviewed ten current and former Success Academy employees from five different Success Academy charter schools. N.Y. Times, *At a Success Academy Charter School, Singling Out Pupils Who Have “Got to Go”* (Oct. 29, 2015). The *Times* reported that “some administrators in the network have singled out children they would like to see leave,” and specifically discussed Brown’s “Got to Go” list. In the article,

Brown acknowledged the list, explaining that “*I felt I couldn’t turn [Success Academy Fort Greene] around if these students remained.*”

125. In January 2016, the State University of New York Charter School Institute, the entity that licenses charter schools in the State of New York, commenced an investigation of Success Academy to determine whether the charter school network is improperly using suspensions and other discipline as a means of forcing student with disabilities to transfer to other schools.

126. Also in January 2016, parents of thirteen students with learning disabilities filed a formal complaint with the U.S. Department of Education, claiming that multiple Success Academy charter schools discriminated against the students because of their disabilities. That complaint echoes the same procedures used to force out the Child-Plaintiffs, namely, refusing to provide appropriate services for students with special needs, using suspensions without alternative instruction as a means of harassing parents and students, and harassing parents by forcing them to immediately pick up children, all in an effort to force those parents to transfer students with disabilities or perceived disabilities into public schools.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Success Academy and Success Academy Fort Greene Violated § 504 by Discriminating Against the Child-Plaintiffs)

127. Plaintiffs repeat and incorporate each and every allegation set forth in the preceding paragraphs.

128. I.L. is an “individual with a disability” under § 504 of the Rehabilitation Act of 1973 because he has a speech-language impairment that substantially limits one or more major life activities. Defendants also regarded I.L. as having a disability. In connection with an

evaluation of I.L., Success Academy employees reported that I.L. had difficulties focusing and being corrected; they suggested that he receive an IEP; and they scored him as high in hyperactivity, anxiety, and depression, among other characteristics associated with ADHD.

129. S.S. is an “individual with a disability” under § 504 of the Rehabilitation Act of 1973 because he has been diagnosed with a learning disability (ADHD) that substantially limits one or more major life activities.

130. M.C. is an “individual with a disability” under § 504 of the Rehabilitation Act of 1973 because Success Academy personnel regarded her as having a disability that interfered with her ability to comply with Success Academy’ Code of Conduct.

131. B.S. is an “individual with a disability” under § 504 of the Rehabilitation Act of 1973 because Success Academy personnel regarded him as having a disability that interfered with his ability to comply with Success Academy’ Code of Conduct.

132. C.S. is an “individual with a disability” under § 504 of the Rehabilitation Act of 1973 because he has been evaluated and has symptoms consistent with ADHD and ODD, which substantially limits one or more major life activities. Defendants also regarded C.S. as having a disability. Specifically, in connection with an evaluation, Success Academy personnel stated that C.S. had an autism spectrum disorder.

133. The Child-Plaintiffs are “otherwise qualified” to attend Success Academy because each could have succeeded at the school had he or she received reasonable accommodations.

134. Brown and other Success Academy employees refused to make any accommodations to their “zero-tolerance” Code of Conduct for the Child-Plaintiffs despite their actual and/or perceived disabilities.

135. Brown and other Success Academy employees discriminated against Child-Plaintiffs on the basis of their disabilities:

- a. by failing to offer § 504 accommodations, such as a behavioral plan, that would have enabled each Child-Plaintiff to better cope with the “zero tolerance” discipline policy;
- b. by segregating the Child-Plaintiffs from the other students in the class;
- c. by denying the Child-Plaintiffs the right to participate in the program to the same extent as other pupils;
- d. by denying the Child-Plaintiffs the right to participate fully in Success Academy’s program;
- e. by expressly encouraging the Parent-Plaintiffs to remove their children from Success Academy Fort Greene; and
- f. by repeatedly, and for extended periods of time, removing the Child-Plaintiffs from their respective classrooms by placing them into a “buddy class,” by dismissing them from school early, and/or by suspending them repeatedly, and failing to provide the Child-Plaintiffs with academic instruction during the time that they were removed from the classroom.

136. Defendants’ actions as against Plaintiffs constituted a method of administration that substantially impaired the ability of students with attentional and learning disabilities to access Success Academy’s program.

137. Defendants’ discrimination against Plaintiffs constitutes violations of § 504 of the Rehabilitation Act of 1973 and the regulations promulgated thereunder.

138. Defendants' actions as against Plaintiffs demonstrate willful and intentional discrimination and therefore a claim for damages under § 504 of the Rehabilitation Act of the 1973 is appropriate.

SECOND CLAIM FOR RELIEF

(Brown Violated § 504 by Discriminating Against the Child-Plaintiffs)

139. Plaintiffs repeat and incorporate each and every allegation set forth in the preceding paragraphs.

140. Defendant Candido Brown, acting in his official capacity as a principal of Success Academy Fort Greene, discriminated against the Child-Plaintiffs on the basis of their respective actual and/or perceived disabilities through the conduct set forth above.

141. As demonstrated by the "Got to Go" list, Brown's conduct against the Child-Plaintiffs demonstrates willful and intentional discrimination and therefore a claim for damages under § 504 of the Rehabilitation Act of 1973 is appropriate.

142. Brown's actions constitute a violation of § 504 of the Rehabilitation Act of 1973 and the regulations promulgated thereunder.

THIRD CLAIM FOR RELIEF

(Defendants Discriminated Against the Child-Plaintiffs by Creating a Hostile Learning Environment in Violation of § 504)

143. Plaintiffs repeat and incorporate each and every allegation set forth in the preceding paragraphs.

144. As students with actual and/or perceived disabilities, the Child-Plaintiffs are members of a protected group.

145. The Child-Plaintiffs have been subjected to unwelcome harassment and discrimination based on a protected characteristic, namely, their respective disabilities. Among

other things, and as set forth above, the Child-Plaintiffs were subjected to repeated disciplinary measures, including, but not limited to, repeated exclusion from class activities, removal from the classroom, removal from the school, suspensions, and threats to call the police and/or ACS to take custody of certain of the Child-Plaintiffs.

146. In light of the Child-Plaintiffs' ages and the frequency with which the disciplinary measures were applied to them, Defendants' discriminatory conduct was sufficiently severe and pervasive such that it altered the conditions of the Child-Plaintiffs' education and created an abusive educational environment.

147. There is a basis to hold Success Academy liable as the discriminatory conduct at issue here is consistent with efforts undertaken by administrators in other Success Academy schools. Moreover, Brown has stated that he created the "Got to Go" list in an effort to improve Success Academy Fort Greene's performance, which furthers Success Academy's goals.

FOURTH CLAIM FOR RELIEF

(Defendant Candido Brown, in his Individual Capacity, Violated 42 U.S.C. § 1983 by Depriving the Child-Plaintiffs of Their Rights Under § 504 of the Rehabilitation Act)

148. Plaintiffs repeat and incorporate each and every allegation set forth in the preceding paragraphs.

149. As a public charter school, Success Academy and Success Academy Fort Greene are state actors for purposes of § 1983. As an employee of Success Academy and principal of Success Academy Fort Greene, Candido Brown was acting at all relevant times under the color of state law.

150. As set forth above, Brown violated Plaintiffs' rights under § 504 by, among other things, failing to notify Plaintiffs of their rights under § 504; failing to direct Plaintiffs to a § 504 coordinator; failing to convene a § 504 meeting to determine whether the Child-Plaintiffs

required a behavioral plan; and failing to develop interventions that would have allowed plaintiffs to benefit from Success Academy's educational program and extracurricular activities. Brown also retaliated against certain of the Parent-Plaintiffs for engaging in protected activity.

151. In violating Plaintiffs' rights under § 504, Brown was motivated by an evil motive or intent, and/or involved reckless or callous indifference to the Plaintiffs' federally-protected rights. Specifically, Brown targeted the Child-Plaintiffs for removal from Success Academy, and by taking various actions against the Plaintiffs to force out these kindergarten and first-grade students from Success Academy.

152. Accordingly, Brown, in his individual capacity, has violated 42 U.S.C. § 1983 for denying Plaintiffs' their rights under § 504 of the Rehabilitation Act and is, therefore, liable for compensatory and punitive damages.

FIFTH CLAIM FOR RELIEF

(Brown Violated § 504 by Retaliating Against Mr. Lawton)

153. Plaintiffs repeat and incorporate each and every allegation set forth in the preceding paragraphs.

154. Plaintiff Shawn Lawton, in communicating his concerns about Success Academy program's impact on his son, was engaging in protected activity under § 504 of the Rehabilitation Act of 1973.

155. A causal connection exists between Mr. Lawton communicating his concerns and Defendant Candido Brown using his official role as principal of Success Academy Fort Greene to ban Mr. Lawton from I.L.'s classroom. Brown's ban on Mr. Lawton's presence occurred only after Brown discovered that Mr. Lawton was speaking to teachers and parents about Success Academy's policies and the impact they were having on I.L.

156. Brown's order to remove Mr. Lawton from the classroom was an adverse action because Mr. Lawton's presence was the sole behavioral support the school allowed to keep his son, I.L., from being moved to the "red" category of Success Academy's green-yellow-red disciplinary policy.

157. Therefore, Brown retaliated against Mr. Lawton for engaging in protected activity, in violation of § 504 of the Rehabilitation Act of 1973.

SIXTH CLAIM FOR RELIEF

(Brown Violated § 504 by Retaliating Against Ms. Ogundiran)

158. Plaintiffs repeat and incorporate each and every allegation set forth in the preceding paragraphs.

159. Plaintiff Folake Ogundiran, in requesting that Success Academy make accommodations to its disciplinary code for her daughter, M.C., was engaging in protected activity under § 504 of the Rehabilitation Act of 1973.

160. A causal connection exists between Ms. Ogundiran communicating her concerns on December 6, 2014, and Defendant Candido Brown's December 9, 2014 threat to call the police to take custody of M.C.

161. Brown's threat to have M.C. picked up by police was an adverse action as against Ms. Ogundiran.

162. Therefore, Brown retaliated against Ms. Ogundiran for engaging in protected activity, in violation of § 504 of the Rehabilitation Act of 1973.

SEVENTH CLAIM FOR RELIEF

(Defendants Intentionally Inflicted Emotional Distress Upon M.C., B.S., C.S., and S.S., and their Parents)

163. Plaintiffs repeat and incorporate each and every allegation set forth in the preceding paragraphs.

164. Defendants' actions as set forth above were outrageous and extreme, were taken solely to cause severe emotional distress to the Plaintiff, so that they would withdraw their children from Success Academy Fort Greene, and did cause each Plaintiff and their children severe emotional distress.

165. The Plaintiffs have filed or will file a notice of claim as against Success Academy. To the extent that notice of claim is not timely, Plaintiffs hereby request an order from the Court excusing the late notice of claim.

EIGHTH CLAIM FOR RELIEF

(Success Academy and Success Academy Fort Greene Negligently Supervised Brown)

166. Plaintiffs repeat and incorporate each and every allegation set forth in the preceding paragraphs.

167. As a public charter school, Success Academy and Success Academy Fort Greene owe a duty to provide an appropriate education to its students, including the Child-Plaintiffs.

168. Success Academy and Success Academy Fort Greene breached that duty and, as a result, the Child-Plaintiffs have been harmed.

169. Brown was, at all relevant times, an employee and/or agent of Success Academy and/or Success Academy Fort Greene.

170. Brown's discrimination against Plaintiffs occurred at Success Academy Fort Greene.

171. Success Academy's training program failed to inform teachers and administrators, including Brown, of the rights of students with disabilities under state and federal law. Success Academy and Success Academy Fort Greene also negligently failed to supervise Brown by failing to ensure that reasonable accommodations were being made for students with disabilities that attended Success Academy Fort Greene. Together, this created a substantial risk that employees, including Brown, would refuse to accommodate known or suspected disabilities of students and encourage them to leave Success Academy schools if the students needed accommodations or modifications of the Code of Conduct.

172. The Plaintiffs have filed or will file a notice of claim as against Success Academy. To the extent that notice of claim is not timely, Plaintiffs hereby request an order from the Court excusing the late notice of claim.

NINTH CLAIM FOR RELIEF

(Brown Violated the N.Y.C. Human Rights Law by Retaliating Against Mr. Lawton)

173. Plaintiffs repeat and incorporate each and every allegation set forth in the preceding paragraphs.

174. As a public charter school, Success Academy and Success Academy Fort Greene are places or providers of public accommodation within the meaning of N.Y. Admin. Code § 8-102(9).

175. As an employee of Success Academy and principal of Success Academy Fort Greene, Brown is an agent and/or employee of a place or provider of public accommodation within the meaning of N.Y.C. Admin. Code 8-107(4) and, at all relevant times, was engaged in an activity to which the New York City Human Rights Law applies.

176. Plaintiff Shawn Lawton opposed Defendants' discrimination against I.L., by voicing concerns to agents or employees of Success Academy Fort Greene concerning the impact of Success Academy's discriminatory "zero tolerance" Code of Conduct on I.L.

177. As a result of that opposition, Brown retaliated against Plaintiff Shawn Lawton by banning him from I.L.'s classroom, despite Success Academy's "open door" policy. Brown's order to ban Mr. Lawton from the classroom was an adverse action because Mr. Lawton's presence was the sole behavioral support the school allowed to keep I.L. from being moved to the "red" category of Success Academy's green-yellow-red disciplinary policy. Brown's retaliation is reasonably likely to deter a person from opposing Success Academy's discrimination against I.L.

178. The Lawton Plaintiffs have filed a notice of claim as against Success Academy. To the extent that notice of claim is not timely, Plaintiffs hereby request an order from the Court excusing the late notice of claim.

TENTH CLAIM FOR RELIEF

(Brown Violated the N.Y.C. Human Rights Law by Retaliating Against Ms. Ogundiran)

179. Plaintiffs repeat and incorporate each and every allegation set forth in the preceding paragraphs.

180. As a public charter school, Success Academy and Success Academy Fort Greene are places or providers of public accommodation within the meaning of N.Y. Admin. Code § 8-102(9).

181. As an employee of Success Academy and principal of Success Academy Fort Greene, Brown is an agent and/or employee of a place or provider of public accommodation

within the meaning of N.Y.C. Admin. Code 8-107(4) and, at all relevant times, was engaged in an activity to which the New York City Human Rights Law applies.

182. Plaintiff Folake Ogundiran opposed Defendants' discrimination against M.C., by requesting accommodations for M.C. to Success Academy's discriminatory "zero tolerance" Code of Conduct.

183. As a result of that opposition, Brown retaliated against Ms. Ogundiran, threatening to call the police to take custody of M.C.

184. Brown's retaliation is reasonably likely to deter a person from opposing Success Academy's discrimination against M.C.

185. The Ogundiran Plaintiffs will file a notice of claim as against Success Academy. To the extent that notice of claim is not timely, Plaintiffs hereby request an order from the Court excusing the late notice of claim.

ELEVENTH CLAIM FOR RELIEF

(Defendants Violated the N.Y.C. Human Rights Law by Discriminating Against the Child-Plaintiffs)

186. Plaintiffs repeat and incorporate each and every allegation set forth in the preceding paragraphs.

187. Success Academy has been certified by the State of New York to operate as a public charter school. As a public charter school, Success Academy and Success Academy Fort Greene are places or providers of public accommodation within the meaning of N.Y. Admin. Code § 8-102(9).

188. As an employee of Success Academy and principal of Success Academy Fort Greene, Brown is an agent and/or employee of a place or provider of public accommodation within the meaning of N.Y.C. Admin. Code 8-107(4).

189. Defendants, directly and/or indirectly, discriminated against the Child-Plaintiffs because of their actual and/or perceived disabilities by refusing, withholding, and/or denying to the Child-Plaintiffs accommodations, advantages, facilities, and/or privileges of Success Academy.

190. The Plaintiffs have filed a notice of claim as against Success Academy. To the extent that notice of claim is not timely, Plaintiffs hereby request an order from the Court excusing the late notice of claim.

DAMAGES

191. As a direct and/or proximate result of the aforementioned violations of Federal, State, and City law, the Child-Plaintiffs have been injured.

192. As a direct and/or actual and proximate result of the aforementioned violations of Federal, State, and City law, the Parent-Plaintiffs have been injured.

193. Defendants' actions were taken recklessly and/or with extreme disregard for the Plaintiffs' rights, entitling Plaintiffs to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

194. Enter judgment against Success Academy and Success Academy Fort Greene for violating § 504 of the Rehabilitation Act of 1973 by discriminating against the Child-Plaintiffs on the basis of their respective disabilities.

195. Enter judgment against Candido Brown for violating § 504 of the Rehabilitation Act of 1973 by discriminating against the Child-Plaintiffs on the basis of their respective disabilities.

196. Enter judgment against Defendants for violating § 504 of the Rehabilitation Act of 1973 by creating a hostile learning environment.

197. Enter judgment against Candido Brown, in his individual capacity, for violating 42 U.S.C. § 1983 by depriving Plaintiffs of their rights under 42 U.S.C. § 1983.

198. Enter judgment against Candido Brown for violating § 504 of the Rehabilitation Act of 1973 by retaliating against Mr. Lawton based on Mr. Lawton having engaged in a protected activity.

199. Enter judgment against Candido Brown for violating § 504 of the Rehabilitation Act of 1973 by retaliating against Ms. Ogundiran based on Ms. Ogundiran having engaged in a protected activity.

200. Enter judgment against Defendants for intentionally inflicting emotional distress upon M.S., B.S., C.S., and S.S., and their respective parents.

201. Enter judgment against Defendants for violating the New York City Human Rights Law by discriminating against I.L. on the basis of his disability.

202. Enter judgment against Success Academy Fort Greene for negligent supervision and training of Candido Brown.

203. Enter judgment against Brown for violating the N.Y.C. Human Rights Law based on his retaliation against Mr. Lawton.

204. Enter judgment against Brown for violating the N.Y.C. Human Rights Law based on his retaliation against Ms. Ogundiran.

205. Enter judgment against Defendants for violating the N.Y.C. Human Rights Law by discriminating against the Child-Plaintiffs on the basis of their respective actual or perceived disabilities.

206. To the extent a notice of claim is necessary to prosecute one or more of the claims for relief asserted herein, enter an order excusing Plaintiffs' late notice of claim.

207. Award Plaintiffs compensatory damages against Defendants, jointly and severally, in an amount to be determined at trial.

208. Award Plaintiffs punitive damages against Defendants, jointly and severally, in an amount to be determined at trial.

209. Award all Plaintiffs their attorneys' fees and costs, pursuant to 29 U.S.C. § 794a, 42 U.S.C. § 1988, the N.Y.C. Human Rights Law, and/or any other applicable statute or regulation.

210. Grant such other and further relief as this court deems just and equitable.

Dated: New York, York
April 29, 2016

NEW YORK LAWYERS FOR THE PUBLIC INTEREST

By: /s/ Katherine Rosenfeld

Roberta Mueller

Irene Mendez

Katherine Rosenfeld

151 West 30th Street
New York, NY 10001
(212) 244-4664
rmueller@nylpi.org
krosenfeld@nylpi.org

Co-Counsel for Plaintiffs

STROOCK & STROOCK & LAVAN LLP

By: /s/ Alan M. Klinger

Alan M. Klinger

Beth A. Norton

David V. Simunovich

180 Maiden Lane
New York, NY 10038
(212) 806-5400
aklinger@stroock.com

Co-Counsel for Plaintiffs

**ADVOCATES FOR JUSTICE,
CHARTERED ATTORNEYS**

By: /s/ Arthur Schwartz
Arthur Z. Schwartz
Laura D. Barbieri

225 Broadway, Suite 1902
New York, New York 10007
(212) 285-1400
aschwartz@afjlaw.com
lbarbieri@advocatesny.com

Co-Counsel for Plaintiffs